

The taxation of Series LLCs is almost exclusively explained and controlled under federal income tax law.

The IRS issued Prop. Regulation 301.7701-1 that was intended to answer questions on how entities, including a Series LLC and its various series are taxed (a "series" being generally defined as a separate aggregation of assets, owned by one or more members who are members in the parent Series LLC). Prior to this Proposed Regulation, there was some confusion, but tax practitioners have taken relief since it was issued and the comment period passed.

SHORT ANSWER: each "series" is considered under federal tax law as a "separate entity formed under state law", ie, it is potentially a taxpayer, unless it is a "disregarded entity". EXAMPLE: a single member LLC or a series owned by only one member can elect to be "disregarded" under federal and state tax law and it would file no return. The Series LLC files the appropriate federal income tax return, either the Form 1120 (if it elects under the "check the box" regulations to be taxed as an "association" and taxed as a C corporation), Form 1120S (it if checked the box for "association" but then filed the "Small Business Election" (aka "Sub S"), or Form 1065 (it elects to be taxed as a partnership). Depending on how each series is owned (one member or more than one member, because only an "association" can have only one member, and a partnership must have two or more), it may have to file its own return, or at a minimum, its own separate Schedule K-1 (filing as a separate "series" partner) reports its separate series share of the taxable income or loss. STATE LAW: under MT law, the filing in MT for payment of state taxes must be the same as is done for federal purposes, so MT gets its taxes on all series taxable income. Also, keep in mind, as an example, one series ("Series 1") could be very successful with lots of taxable income, and another series ("Series 2") could have large losses with no ability to utilize them, only carry them forward. Under the federal tax laws, they cannot aggregate their tax calculations. Series 1 pays a large tax to MT, Series 2 has to carry its loss forward with no assurance of ever being able to use it.

PAYROLL TAXES: the IRS settled this question as well: if there is no clear evidence that a separate series is an employer for payroll tax purposes and filing requirements, then the parent series LLC is deemed the employer of ALL series' employees and is responsible for all filings and payments.

MOST POPULAR BUSINESS SECTORS TO USE SERIES LLCs: (1) investment entities that want to segregate certain types of investments for different owners/investors, but want to gain efficiencies in registrations, annual filings and accountings that can get expensive (2) real estate entities with a series of different properties, with different risks and returns (3) diversified business holding companies with a wide variation of interests (mining, agriculture, real estate, services) and (4) captive insurance programs.

I believe only eleven (11) states have adopted Series LLC legislation, but with the IRS clarifications, the tide will turn. The Series LLC provides efficiency in operations, flexibility in ownership and allocations of risk and liability and does nothing to deprive the government of taxes that are due. MT now has over 110 captives or RRGs, and we had only 3 or 4 in 2004 when we formed MCIA. The Series LLC legislation will once again send the message that we are cutting edge in our approach to this industry and others that need full planning and operational flexibility.

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Let me know if this helps. Feel free to read this into the record. Don't give me credit, I pulled this info from several law review articles, tax journals, Prop Reg 301.7701 etc.